

**KETUA PENGARAH KASTAM DAN EKSAIS v.
COACH MALAYSIA SDN BHD**

COURT OF APPEAL, PUTRAJAYA
UMI KALTHUM ABDUL MAJID JCA
ABDUL RAHMAN SEBLI JCA
ZALEHA YUSOF JCA

[CIVIL APPEAL NO: W-01(IM)-338-09-2017]
22 JANUARY 2019

CIVIL PROCEDURE: *Judicial review – Application for – Director-General of Customs dismissed taxpayer’s application for special refund of sales tax for goods held on hand – Application to quash decision – Whether application filed within time – Whether court ought to exercise discretion for extension of time – Whether there was ‘good reason’ for court to exercise extension of time – Rules of Court 2012, O. 53 r. 3(6) & (7)*

REVENUE LAW: *Goods and services tax – Special refund – Application for special refund of sales tax for goods held on hand – Application dismissed by Director-General of Customs – Decision to dismiss uploaded on taxpayer’s Taxpayer Access Point account – Taxpayer received notification of decision via e-mail – Date of decision communicated to taxpayer – Whether taxpayer’s application for judicial review premature – Whether taxpayer exhausted all available remedies before coming to court – Goods and Services Tax Act 2014, ss. 20, 124, 167(3) & 190*

The respondent was in the business of importing fashion apparels and accessories. When the Goods and Services Tax Act 2014 (‘GST Act’) came into force, the respondent was registered under s. 20 of the GST Act. The respondent submitted an application to the Director-General of Customs (‘the appellant’) for a special refund of sales tax for goods held on hand, in the amount of RM5,120,388.28 (‘the special refund sum’), pursuant to s. 190 of the GST Act. The appellant requested for additional supporting documents and further information from the respondent, to which the respondent obliged. On 18 January 2017, the appellant informed the respondent that its application for the special refund was rejected and the decision was uploaded to the respondent’s Taxpayer Access Point account (‘TAP account’) (‘the decision’). The appellant also sent a notification of this decision to the respondent’s e-mail on 19 January 2017. Dissatisfied, the respondent filed an application for a judicial review, at the High Court, for, *inter alia*, (i) an order of *certiorari* to quash the decision; (ii) an order of *mandamus* directing the appellant to pay the special refund sum to the respondent; and (iii) if the respondent’s application was found to have been out of time, that the respondent be granted an extension of time pursuant to O. 53 r. 3(7) of the Rules of Court 2012 (‘the ROC’). The High Court allowed prayer (iii) above, proceeded to hear the merits of the application and, at the

- A conclusion of the hearing, allowed the application. Hence, the present appeal. The appellant submitted that (i) the respondent's application was outside the three-month limitation period prescribed by O. 53 r. 3(6) of the ROC; (ii) time began to run from 18 January 2017, which was the date the decision was uploaded to the respondent's TAP account; and (iii) the
- B respondent should have known of the decision as the notification was sent to the respondent's e-mail address on 19 January 2017. The respondent argued that (i) the leave application was still within time; and (ii) 2 June 2017 was the date the decision was communicated to the respondent, within the meaning of O. 53 r. 3(6) of the ROC, as it only came to know of the decision after receiving the TAP account password the day before from its auditor.
- C

Held (allowing appeal)

Per Abdul Rahman Sebli JCA delivering the judgment of the court:

- (1) By virtue of s. 167(3) of the GST Act, the decision that was uploaded to the respondent's TAP account on 18 January 2017 was deemed to have been served on the respondent on the same date. This was the date the decision was 'communicated' to the respondent for the purposes of O. 53 r. 3(6) of the ROC. The respondent's excuse for the inordinate delay in filing the leave application was unacceptable. It was the respondent's duty to monitor its TAP account and not to blame its own auditor for missing the deadline. The respondent's claim that it did not even know the password to its own TAP account was hard to believe and equally unacceptable. Even if it was true the delay was caused by the respondent's auditor, the respondent's internal problems had nothing to do with the appellant. The appellant should not be put at a disadvantage due to the respondent's lack of care in managing its TAP account. (paras 30-32)
- (2) Order 53 r. 3(7) of the ROC gives the court the discretion to grant an extension of time if it considers that there is a good reason for doing so. One 'good reason' is enough to entitle the applicant an extension of time. It is a matter for the judicial exercise of the judge's discretion. The High Court Judge ('HCJ') erred in accepting the respondent's reason as a 'good reason' to justify an extension of time. It would be setting a dangerous precedent for the court to allow such excuse as a way to overcome the limitation period prescribed by law. (paras 14, 15 & 33)
- (3) The respondent's application for judicial review was premature as there was an alternative remedy available to it under s. 124 of the GST Act. Under the said provision, any person aggrieved by the decision of the appellant may apply, within 30 days of the notification of the decision, for a review of the decision, provided no appeal was made to the Tribunal or to the court within that period. This was not done by the

respondent. The intention of the Legislature was clear and that was for the person aggrieved by the decision of the appellant to first exhaust the internal remedy before appealing to the Tribunal or to the court. (34-36)

A

Bahasa Malaysia Headnotes

Responden menjalankan perniagaan mengimport pakaian dan aksesori fesyen. Apabila Akta Cukai Barang dan Perkhidmatan 2014 ('Akta GST') berkuat kuasa, responden didaftarkan bawah s. 20 Akta GST. Responden mengemukakan satu permohonan kepada Ketua Pengarah Kastam ('perayu') untuk mendapatkan bayaran balik khas cukai jualan untuk barang dalam pegangan, berjumlah RM5,120,388.28 ('jumlah bayaran balik khas'), bawah s. 190 Akta GST. Perayu meminta dokumen-dokumen sokongan tambahan dan maklumat lanjut daripada responden dan responden memenuhi permintaan ini. Pada 18 Januari 2017, perayu memaklumkan responden permohonannya untuk bayaran balik khas ditolak dan keputusan ini dimuat naik dalam akaun Taxpayer Access Point ('akaun TAP') milik responden ('keputusan'). Perayu turut mengirim makluman keputusan ini kepada e-mel responden pada 19 Januari 2017. Tidak berpuas hati, responden memfailkan permohonan semakan kehakiman, di Mahkamah Tinggi, untuk, antara lain, (i) satu perintah *certiorari* membatalkan keputusan tersebut; (ii) satu perintah *mandamus* memerintahkan perayu membayar jumlah bayaran balik khas kepada responden; dan (iii) jika permohonan responden didapati di luar had masa, responden diberi lanjutan masa bawah A. 53 k. 3(7) Kaedah-Kaedah Mahkamah 2012 ('KKM'). Mahkamah Tinggi membenarkan permohonan (iii) di atas, meneruskan pendengaran merit permohonan dan, pada penutup pendengaran, membenarkan permohonan tersebut. Maka timbul rayuan ini. Perayu menghujahkan (i) permohonan responden di luar had masa tiga bulan yang ditetapkan oleh A. 53 k. 3(6) KKM; (ii) masa bermula dari 18 Januari 2017, iaitu tarikh keputusan tersebut dimuat naik dalam akaun TAP responden; dan (iii) responden sepatutnya tahu tentang keputusan tersebut kerana makluman telah dihantar kepada alamat e-mel responden pada 19 Januari 2017. Responden menegaskan (i) permohonan kebenaran masih dalam had masa; dan (ii) 2 Jun 2017 ialah tarikh keputusan tersebut dimaklumkan kepada responden, dalam maksud A. 53 k. 3(6) KKM, kerana responden mengetahui tentang keputusan ini selepas menerima kata laluan akaun TAP miliknya, daripada juruauditnya, sehari sebelum itu.

B

C

D

E

F

G

Diputuskan (membenarkan rayuan)

H

Oleh Abdul Rahman Sebli HMR menyampaikan penghakiman mahkamah:

- (1) Berdasarkan s. 167(3) Akta GST, keputusan yang dimuat naik dalam akaun TAP responden pada 18 Januari 2017 dianggap telah diserahkan kepada responden pada tarikh sama. Ini ialah tarikh keputusan tersebut 'dikomunikasikan' kepada responden bagi maksud A. 53 r. 3(6) KKM.

I

- A Alasan responden untuk kelengahan terlampau dalam memfailkan permohonan kebenaran tidak boleh diterima. Responden berkewajipan mengawasi akaun TAP miliknya dan bukan menyalahkan juruauditnya sendiri kerana terlepas tarikh akhir. Dakwaan responden bahawa responden tidak tahu kata laluan akaun TAP miliknya sukar dipercayai
- B dan tidak boleh diterima. Jika pun betul kelengahan tersebut disebabkan oleh juruaudit responden, masalah dalaman responden tiada kaitan dengan perayu. Perayu tidak patut disusahkan hanya kerana responden gagal menguruskan akaun TAP miliknya.
- (2) Aturan 53 k. 3(7) KKM memberi mahkamah budi bicara untuk melanjutkan masa jika mahkamah menimbangkan bahawa terdapat sebab yang baik untuk berbuat demikian. Satu 'sebab yang baik' cukup untuk melayakkan pemohon mendapat lanjutan masa. Ini adalah perjalanan kehakiman budi bicara hakim. Hakim Mahkamah Tinggi terkhilaf dalam menerima sebab responden sebagai 'sebab yang baik'
- D untuk mewajarkan satu lanjutan masa. Mahkamah akan menetapkan satu duluan yang berbahaya jika alasan demikian dibenarkan untuk mengatasi tempoh had masa yang ditetapkan oleh undang-undang.
- (3) Permohonan responden untuk semakan kehakiman adalah pramatang kerana dia mempunyai remedi alternatif bawah s. 124 Akta GST. Bawah peruntukan tersebut, mana-mana orang yang terkilan boleh memohon kepada perayu, dalam tempoh 30 hari dari tarikh orang itu diberitahu tentang apa-apa keputusan, untuk semakan keputusan tersebut, dengan syarat tiada rayuan atas perkara yang sama telah dibuat kepada Tribunal atau mahkamah dalam tempoh tersebut. Ini tidak dilakukan oleh responden. Niat badan perundangan jelas iaitu agar orang yang terkilan dengan keputusan perayu, pertama sekali, menghabiskan remedi dalaman sebelum merayu pada Tribunal atau mahkamah.

Case(s) referred to:

- Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 5 CLJ 865 FC (*refd*)
- G *Government of Malaysia & Anor v. Jagdis Singh* [1987] 1 CLJ 451; [1987] CLJ (Rep) 110 SC (*refd*)
- Ratnam v. Cumarasamy & Anor* [1964] 1 LNS 237 PC (*refd*)
- Seruan Gemilang Makmur Sdn Bhd v. Pegawai Kewangan Negeri Pahang* [2016] 4 CLJ 100 CA (*refd*)
- H *Tan Siew Peng v. OCBC Bank (M) Bhd* [1998] 2 CLJ 684 CA (*refd*)
- Tengku Anoomshah Tengku Zainal Abidin & Anor v. Collector Land Revenue, North-East District, Penang & Anor* [1995] 3 CLJ 434 HC (*refd*)
- Tunku Yaacob Holdings Sdn Bhd v. Pentadbir Tanah Kedah & Ors* [2015] 3 CLJ 1017 FC (*refd*)
- I *Wong Kin Hoong & Anor v. Ketua Pengarah Jabatan Alam Sekitar & Anor* [2013] 4 CLJ 193 FC (*refd*)

Legislation referred to:

Goods and Services Tax Act 2014, ss. 20, 124, 166, 167(1)(c), (3), 190, 191
Rules of Court 2012, O. 53 r. 3(6), (7)

For the appellant - Farah Ezlin Yusop Khan; SFC & Syamimi Farhana; FC
For the respondent - Mohd Arief Emran Arifin, Jason Liang & Kelvin Hong Meng Chong;
M/s Wong & Partners

[Editor's note: For the High Court judgment, please see Coach Malaysia Sdn Bhd v. Ketua Pengarah Kastam Dan Eksais [2018] 6 CLJ 246 (overruled).]

Reported by Najib Tamby

JUDGMENT**Abdul Rahman Sebli JCA:**

[1] The appellant's appeal was against the decision of the Kuala Lumpur High Court granting the respondent's application for judicial review. We allowed the appeal and these are our grounds.

[2] The respondent's application for judicial review was for the following reliefs:

- (i) an order of *certiorari* to quash the appellant's decision dated 18 January 2017 that the respondent's application for the special refund of sales tax for goods held on hand pursuant to s. 190 of the Goods and Services Tax Act 2014 ("the GST Act") was rejected without any justification or reasoning;
- (ii) an order of *mandamus* directing the appellant to refund the sum of RM5,120,368.28 for the special refund of sales tax for goods held on hand to be paid to the respondent by the appellant upon the final determination of the judicial review;
- (iii) if the respondent's application was found to have been out of time, that the respondent be granted an extension of time pursuant to O. 53 r. 3(7) of the Rules of Court 2012 ("the Rules");
- (iv) that the costs of and/or incidental to the application be costs in the cause; and/or
- (v) such further, alternative, consequential or other relief as the court deemed fit and proper in the circumstances.

[3] The learned judge allowed prayer (iii) above and thereafter proceeded to hear the merits of the respondent's application for review, at the conclusion of which she allowed the application.

- A [4] The salient facts are these. The respondent is a company incorporated in Malaysia on 22 March 2011 and is in the retail business of importing fashion apparels and accessories under the “Coach” brand name designed and produced by the respondent’s holding company, Coach Inc. for the purpose of being sold to its Malaysian customers. The respondent retails its goods through its 18 outlets in various locations in Malaysia.
- B [5] With the introduction of the GST Act which came into force on 1 July 2014 (Parts I, II, IV, VI and XVI) and on 1 April 2015 (Parts IX, XIII, XVII and XVIII), the respondent applied for registration and became registered under s. 20 with effect from 1 April 2015.
- C [6] The GST Act has since been repealed. However, the repeal has no bearing on the outcome of this appeal as the respondent was still subject to the GST Act when the cause of action arose.
- D [7] On 29 September 2015, the respondent submitted an application to the Director General of Customs (“the DG”) for a special refund of sales tax for goods held on hand pursuant to s. 190 of the GST Act. The application was made online by the respondent and was in respect of “women’s and men’s bags, women’s and men’s small leather goods, business cases, footwear, wearables including outerwear, watches, weekend and travel accessories, scarves, sunwear, fragrance, travel bags and other lifestyle products”. The total amount of special refund that the respondent applied for was RM5,120,388.28.
- E [8] The respondent claimed that it had satisfied all the requirements for the special refund application as stipulated by s. 190 and s. 191 of the GST Act.
- F [9] By e-mail dated 9 December 2015, the DG requested for additional supporting documents and further information from the respondent for sales tax audit purposes. The request was complied with by the respondent *vide* e-mail dated 16 December 2015 by handing over the physical copies of the relevant documents and information to the DG, which was received by the DG on 21 December 2015.
- G [10] On 18 January 2017, the appellant informed the respondent that its special refund application was rejected. The decision was conveyed to the respondent by uploading the rejection letter to the respondent’s Taxpayer Access Point System account (“TAPS account”). The appellant followed this up by sending a notification of the decision to the respondent’s e-mail address at coachmalaysiagst@coach.com on 19 January 2017.
- H [11] Dissatisfied with the decision, the respondent filed for judicial review, which as we mentioned, was allowed by the High Court. Hence the present appeal by the appellant.
- I

[12] At the commencement of the hearing, the learned Senior Federal Counsel raised the following issues: A

- (i) there was non-compliance with O. 53 r. 3(6) of the Rules and there was no good reason for the grant of an extension of time; and
- (ii) the application was premature and misconceived as there was an alternative remedy, ie, a provision allowing for review under s. 124 of the GST Act. B

[13] With regard to issue (i) above, O. 53 r. 3(6) of the Rules provides as follows:

3(6) An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of application first arose or when the decision is first communicated to the applicant. C

[14] Order 53 r. 3(7), however, gives the court the discretion to grant an extension of time if it considers that there is a good reason for doing so. We reproduce below O. 53 r. 3(7) for ease of reference: D

(7) The Court may, upon an application, extend the time specified in rule 3(6) if it considers that there is a good reason for doing so.

[15] By the terms of the order, one “good reason” is good enough to entitle the applicant to an extension of time. It is a matter for the judicial exercise of the judge’s discretion. On the attitude of the appellate court in respect of the exercise by the judge of the discretion vested in him, the Privy Council in *Ratnam v. Cumarasamy & Anor* [1964] 1 LNS 237; [1965] 1 MLJ 228 provided the following useful guideline: E

The principles upon which a court will act in reviewing the discretion exercised by the lower court are well settled. There is a presumption that the judge has rightly exercised his discretion (*Charles Osenton & Co v. Johnson* [1942] AC 130 per Lord Wright at p. 148). The court will not interfere unless it is clearly satisfied that the discretion has been exercised on a wrong principle and should have been exercised in a contrary way or that there has been a miscarriage of justice (*Evans v. Bartlam* [1937] AC 473). F G

[16] The burden is on the applicant who seeks an extension of time to make available sufficient material upon which the court may exercise the discretion in his favour: See *Tan Siew Peng v. OCBC Bank (M) Bhd* [1998] 2 CLJ 684; [1998] 2 MLJ 420 CA. H

[17] There is sufficient adjective law on the effect of failure to comply with the limitation period prescribed by O. 53 r. 3(6) of the Rules. Suffice it if we refer to just four of them. In *Tengku Anoomshah bin Tengku Zainal Abidin & Anor v. Collector Land Revenue, North-East District, Penang & Anor* [1995] 3 CLJ 434, Vincent Ng Kim Khoay J in his judgment said at p. 439: I

- A On general principles, this Court has no inherent jurisdiction to extend time except where such power is expressly given to it under the provision of the law. See *Central Electricity Board v. Commissioner of the Federal Capital and Anor.*; *Insurance Company of North America – 3rd party* [1967] 2 MLJ 161.
- B However, the words “or, ... except where the delay is accounted for to the satisfaction of the Court or Judge to whom the application for leave is made” in Order 53 r. 1A, which deals with the applications, would sufficiently clothe the Court with powers to extend time to enable the aggrieved party to apply for leave to issue an order of *certiorari*. But though the Court has an unfettered discretion to grant or refuse an extension of time, the rules of Court must *prima facie* be obeyed; and in order to justify an extension of time, there must be some material on which the Court
- C can exercise its discretion in favour of the applicant. For otherwise the party in breach of the rules would have an unfettered right to extension of time which would defeat the very purpose and object of the rules of limitation of period. See *Ong Guan Teck & Ors v. Hijjas* [1982] 1 MLJ 105.
- D [18] In *Wong Kin Hoong & Anor v. Ketua Pengarah Jabatan Alam Sekitar & Anor* [2013] 4 CLJ 193; [2013] 4 MLJ 161 the Federal Court came to the following conclusion:
- [30] In conclusion, we are of the view that the time frame in applying for judicial review prescribed by the Rules is fundamental. It goes to jurisdiction and once the trial judge had rejected the explanation for the delay for extension of time to apply for judicial review, it follows that the court no longer has the jurisdiction to hear the application for leave for judicial review. Whether the application has merits or not, is irrelevant.
- E [19] In *Seruan Gemilang Makmur Sdn Bhd v. Pegawai Kewangan Negeri Pahang* [2016] 4 CLJ 100, this court held as follows:
- F [78] In our view, the *prima facie* rule is that an application to apply for leave for judicial review made outside the prescribed period will not be entertained and it is a pre-condition to the exercise of discretion in his or her favour that the applicant show a (*sic*) “a good reasons” of the delay. The court would not grant the application for extension unless positively
- G satisfied it is proper to do so. The judicial rulings indicate that when explanations for delay will be acceptable may vary according to the circumstances of each case.
- [79] The settled law is that the operative time for the ground to have arisen, and which set the timeline within which the application is to be made, is the date when the first decision communicated to the applicant.
- H [20] Last but not least, the Federal Court case of *Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 5 CLJ 865; [2010] 3 MLJ 145 where it was held that the stringent conditions imposed by O. 53 of the Rules are intended to protect those entrusted with the enforcement of public duties against groundless harassment and to reduce delays in resolving applications in the interest of good administration. The court went on to say at p. 897 (CLJ); p. 172 (MLJ):
- I

However, O. 53 of the RHC sets out a specific procedure for an aggrieved party seeking relief, including a declaration, against a public authority on his infringed right protected to which he was entitled to protection under public law to follow. It is our view that when such an explicit procedure is created to cater for this purpose, then as a general rule all such application for such relief must commence according to what is set down in O. 53 of the RHC otherwise it would be liable to be struck off for abusing the process of the court.

A

B

[21] Coming back to the present appeal, the appellant's contention was that the respondent's application for leave was outside the three-month limitation period prescribed by O. 53 r. 3(6) of the Rules. It was submitted that time began to run from 18 January 2017, the date the appellant's decision was uploaded onto the respondent's TAPS account. The learned judge accepted this proposition when she said at para. [27] of her grounds of judgment:

C

[27] I am of the considered opinion and I agree with learned Senior Federal Counsel for the DG that the Decision had been communicated to the applicant *via* uploading it into the applicant's TAP System account on 18.1.2017. A notification was also sent by email on 19.1.2017.

D

[22] Measured from 18 January 2017, the last date for the respondent to file the leave application therefore fell on 18 April 2017. As such, the respondent was three months out of time by the time it filed the leave application on 17 July 2017.

E

[23] It was submitted on behalf of the appellant that the respondent should have known of the rejection decision as the e-mail address to which the notification was sent on 19 January 2017 was provided by the respondent itself when it registered for the TAPS account.

F

[24] The respondent however contended that it was still within time to file the leave application. The reason given was that, it only came to know of the decision on 2 June 2017, and this was after receiving the TAPS account password from its auditor the day before, that is, on 1 June 2017. According to the respondent, this was the date the decision was "communicated" to it within the meaning of O. 53 r. 3(6) of the Rules.

G

[25] What the respondent was implying was that it did not even know the password to its TAPS account. It had to wait for its auditor to give it the password to gain access to the TAPS account. It is obvious that the respondent was putting the blame on the auditor for its delay in filing the leave application. The learned judge had this to say in allowing the respondent's application for an extension of time:

H

[34] Having considered the factual matrix of this case, I am of the considered opinion that the circumstances in this case warrant an exercise of the court's discretion to extend time in the applicant's favour. The applicant has not slept on its rights. The applicant had responded to the

I

- A DG's request for documents and information promptly between 9.12.2015 to 13.6.2016. From 27.6.2016 to 22.11.2016, the applicant has made several inquiries to the DG on the status of its application for a refund, but the DG failed to respond to the same.
- B [26] Her Ladyship then referred to the decision of the Federal Court in *Tunku Yaacob Holdings Sdn Bhd v. Pentadbir Tanah Kedah & Ors* [2015] 3 CLJ 1017; [2016] 1 MLJ 200 and went on to say:
- C [36] Added to that, the applicant genuinely did not know about the Decision as they were not informed of the same by their former GST provider, Mazars. This can be seen from exhibit A-17, where the applicant's employee had emailed Alicia Chin of Mazars if Alicia Chin would login the customs TAP website and 'check if we have received any response'. Upon receipt of the TAP login access from Mazars, the applicant then found out about the Decision and filed this application without undue delay.
- D [27] The appellant's answer to the reason given by the respondent for the delay was that this was not the first time that such decision was communicated to the respondent using the TAPS account, and the respondent had been using the system ever since it was registered on 1 April 2015. There was therefore no valid excuse for the respondent not to act promptly.
- E [28] The TAPS account was an electronic service and its use was statutorily prescribed by s. 166 of the repealed GST Act, which provided as follows:
- F Use of electronic service
- F 166(1) Notwithstanding any other provision of this Act and subject to regulations made under this Act, the Director General may provide an electronic service to any registered user for:
- G (a) the filing or furnishing of any application, return, declaration or any other document; and
- G (b) the service of any notice, direction, order, permit, receipt or any other document.
- H (2) Where an electronic notice is made and transmitted to the Director General, the Director General shall not be liable for any loss or damage suffered by the registered user by reason of any error or omission of whatever nature or however arising appearing in any electronic notice obtained by the registered user under the electronic service if the error or omission was made in good faith and in the ordinary course of the discharge of the duties of the Director General or occurred or arose as a result of any defect or breakdown in the service or in the equipment used for the provision of the service.
- I (3) Any electronic notice made and transmitted by the registered user shall be deemed to have been filed, furnished or served at the time the electronic notice is received by the Director General.

(4) For the purposes of this section, “registered user” means any person who is authorised in writing by the Director General to gain access to and use the electronic service. A

[29] For service of documents, the mode was prescribed by s. 167(1)(c) of the GST Act, which reads:

Service of notices B

167(1) Every notice, direction or any other document required by this Act to be served on any person may be served:

(a) ...

(b) ... C

(c) by electronic service.

(2) ...

(3) Where a person has given his consent for a notice to be served on him through the electronic service, the notice shall be deemed to have been served at the time when the electronic notice is transmitted to his account through the electronic service. D

[30] Thus, by virtue of s. 167(3) of the GST Act, the appellant’s decision that was uploaded to the respondent’s TAPS account on 18 January 2017 was deemed to have been served on the respondent on the same date. The learned judge was therefore right in holding that this was the date the decision was “communicated” to the respondent for the purposes of O. 53 r. 3(6) of the Rules. E

[31] The respondent’s excuse for the inordinate delay in filing the leave application is unacceptable. It was the duty of the respondent to monitor its TAPS account and not to blame its own auditor for missing the dateline. The respondent’s claim that it did not even know the password to its own TAPS account is hard to believe and is equally unacceptable. F

[32] In any event, the delay caused by the auditor, even if true, was the respondent’s internal problem and had nothing to do with the appellant. The appellant should not be put at a disadvantage due to the respondent’s lack of care in managing its TAPS account. G

[33] In the circumstances, we were of the view, with due respect to the learned judge, that she was wrong in accepting the reason as a “good reason” to justify an extension of time. It will be setting a dangerous precedent for the court to allow such kind of excuse as a way to overcome the limitation period prescribed by the law. H

[34] We further agreed with the learned Senior Federal Counsel that the appeal should be allowed on another ground, and that is, the respondent’s application for judicial review was premature as there was an alternative remedy available to it under s. 124 of the GST Act. The provision was couched in the following language: I

A Application for review

124(1) Any person may apply to the Director General within thirty days from the date the person has been notified of any decision made by an officer of goods and services tax for the review of the decision and provided no appeal has been made on the same matter to the Tribunal or court.

B

(2) Where an application has been made under subsection (1), the Director General shall make a decision and notify the person within sixty days from the date of the application is received or within the time practicable.

C

(3) An application under subsection (1) shall be made in the prescribed manner and prescribed form.

[35] What the provision meant was that any person aggrieved by the decision of the DG may apply, within thirty days of the notification of the decision, for a review of the decision, provided no appeal was made to the Tribunal or to the court within that period.

D

[36] This was not done by the respondent. In our view, the intention of the Legislature then was clear, and that was for the person aggrieved by the decision of the DG to first exhaust the internal remedy before appealing to the Tribunal or to the court.

E

[37] In *Government of Malaysia & Anor v. Jagdis Singh* [1987] 1 CLJ 451; [1987] CLJ (Rep) 110; [1987] 2 MLJ 185, the Supreme Court reiterated the following principle:

F

A clear principle is reiterated here ie, it is not a rigid rule that whenever there is an appeal procedure available to the applicant he should be denied judicial review. Judicial review is always at the discretion of the Court but where there are other avenue or remedy open to the applicant it will only be exercised in very exceptional circumstances.

G

[38] The respondent had not shown “very exceptional circumstances” for going for judicial review instead of first applying for review under s. 124 of the GST Act.

[39] It was for all the reasons aforesaid that we allowed the appellant’s appeal with costs of RM5,000 and set aside the decision of the High Court.

H

I